



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2016-0050; FRL-9943-59-Region 10]

Approval and Promulgation of Implementation Plans; Oregon:

Interstate Transport of Lead and Nitrogen Dioxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Clean Air Act (CAA) requires each State Implementation Plan (SIP) to contain adequate provisions prohibiting air emissions that will have certain adverse air quality effects in other states. On October 20, 2015, the State of Oregon made a submittal to the Environmental Protection Agency (EPA) to address these requirements. The EPA is proposing to approve the submittal as meeting the requirements that each SIP contain adequate provisions to prohibit emissions that will contribute significantly to nonattainment or interfere with maintenance of the 2008 lead (Pb) and 2010 nitrogen dioxide (NO₂) National Ambient Air Quality Standards (NAAQS) in any other state.

DATES: Written comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R10-OAR-2016-0050, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from <http://www.regulations.gov>. The

EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

Docket: All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, i.e., CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically at <http://www.regulations.gov> or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Kristin Hall at (206) 553-6357, hall.kristin@epa.gov, or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we,” “us,” or “our” is used, it is intended to refer to the EPA.

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I. Background

On October 15, 2008, the EPA revised the level of the primary and secondary Pb NAAQS from 1.5 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) to $0.15 \mu\text{g}/\text{m}^3$ (73 FR 66964, published November 12, 2008). On January 22, 2010, the EPA established a primary NO_2 NAAQS at 100 parts per billion (ppb), averaged over one hour, supplementing the existing annual standard (75 FR 6474, published February 9, 2010).

The CAA requires states to submit SIPs meeting sections 110(a)(1) and (2) within three years after promulgation of a new or revised standard. CAA sections 110(a)(1) and (2) address basic SIP requirements, including but not limited to emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards – so-called infrastructure requirements. To help states meet this statutory requirement, the EPA issued infrastructure guidance for the 2008 Pb NAAQS.¹ Subsequently, on September 13, 2013, the EPA issued updated infrastructure guidance for multiple standards, including the 2010 one hour NO_2 NAAQS.²

One of the infrastructure elements, CAA section 110(a)(2)(D)(i), requires SIPs to contain good neighbor provisions to prohibit certain adverse air quality effects on neighboring states due to interstate transport of pollution. There are four sub-elements within CAA section

¹ Stephen D. Page, Director, Office of Air Quality Planning and Standards. “Guidance on Infrastructure State Implementation Plan (SIP) Elements Required Under Sections 110(a)(1) and (2) for the 2008 Lead (Pb) National Ambient Air Quality Standards.” Memorandum to EPA Air Division Directors, Regions I-X, October 14, 2011.

² Stephen D. Page, Director, Office of Air Quality Planning and Standards. “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2).” Memorandum to EPA Air Division Directors, Regions 1 – 10, September 13, 2013.

110(a)(2)(D)(i). This action addresses the first two sub-elements of the good neighbor provisions, at CAA section 110(a)(2)(D)(i)(I). These sub-elements require that each SIP for a new or revised standard contain adequate provisions to prohibit any source or other type of emissions activity within the state from emitting air pollutants that will contribute significantly to nonattainment or interfere with maintenance of the applicable air quality standard in any other state.

II. State Submittal

On October 20, 2015, Oregon made a submittal to address the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for multiple NAAQS, including the 2008 Pb and 2010 one hour NO₂ NAAQS. We note that this action addresses the CAA section 110(a)(2)(D)(i)(I) interstate transport requirements for the 2008 Pb and 2010 one hour NO₂ NAAQS only. We intend to address the remainder of the Oregon submittal, including requirements related to the 2010 one hour sulfur dioxide NAAQS and the 2012 annual fine particulate matter NAAQS in separate, future actions.

CAA sections 110(a)(1) and (2) and section 110(l) require that revisions to a SIP be adopted by the state after reasonable notice and public hearing. The EPA has promulgated specific procedural requirements for SIP revisions in 40 CFR part 51, subpart F. These requirements include publication of notices by prominent advertisement in the relevant geographic area, a public comment period of at least 30 days, and an opportunity for a public hearing. The Oregon submittal included public process documentation, including a duly-noticed public hearing held on August 18, 2015. We find that the process followed by Oregon in adopting the SIP submittal complies with the procedural requirements for SIP revisions under CAA section 110 and the EPA's implementing regulations.

III. EPA Evaluation

A. 2008 Pb NAAQS

The EPA believes, as noted in the October 14, 2011 infrastructure guidance, that the physical properties of Pb prevent Pb emissions from experiencing the same travel or formation phenomena as fine particulate matter or ozone. More specifically, there is a sharp decrease in Pb concentrations, at least in the coarse fraction, as the distance from a Pb source increases.

Accordingly, while it may be possible for a source in a state to emit Pb in a location and in quantities that may contribute significantly to nonattainment or interfere with maintenance of the standard in another state, the EPA anticipates that this would be a rare situation, e.g., where large sources are in close proximity to state boundaries. The EPA's experience with initial Pb designations suggests that sources that emit less than 0.5 tons per year or that are located more than two miles from a state border generally appear unlikely to contribute significantly to nonattainment in another state.

As recommended by the EPA's guidance, Oregon evaluated whether large sources of Pb are located in close proximity to the border that have emissions such that they contribute significantly to nonattainment or interfere with maintenance of the 2008 Pb NAAQS in neighboring states. The state identified no sources of Pb emissions in Oregon greater than 0.5 tons per year that are also located within two miles of the border. The submittal also included a review of data from Pb monitors in bordering states and trends in monitored values in Oregon and bordering states.

Compliance with the Pb NAAQS is measured by comparing the maximum rolling three-month average, over a three-year period, to the level of the NAAQS. This statistic represents the design value at a specific monitor. Oregon found that, for the design value period of 2011

through 2013, the only monitors violating the Pb NAAQS in a state bordering Oregon were those monitors located in Los Angeles, San Diego, and San Mateo, California. Oregon concluded that it is unlikely that sources in Oregon will significantly contribute to nonattainment or interfere with maintenance of the 2008 Pb NAAQS in any other state.

We reviewed the Oregon submittal with respect to Pb and we agree with the state's conclusion. 2011 national emissions inventory data confirm that there are no Oregon sources identified that emit 0.5 tons per year or more of Pb that are also located within two miles of the Oregon border.³ We also reviewed the most recent data on ambient Pb levels in neighboring states – that became available after Oregon conducted its analysis.

For the 2012 through 2014 design value period we found that, for the purposes of evaluating significant contribution to nonattainment, there are only two violating monitors in states that border Oregon.⁴ These monitors are located in San Mateo and San Diego, California, and are approximately 300 and 600 miles from the Oregon border, respectively. We also reviewed data for the previous two design value periods – 2010 through 2012 and 2011 through 2013 – for purposes of evaluating interference with maintenance. We identified one monitor in a bordering state that violated the 2008 Pb NAAQS in these previous periods, but attained the standard in the most recent period of 2012 through 2014. This monitor is located in Los Angeles, California – approximately 500 miles from the Oregon border. In all instances, none of these monitors are within sufficient proximity to Oregon to suggest that Pb emissions from Oregon will contribute significantly to nonattainment or interfere with maintenance of the 2008 Pb NAAQS in any other state.

³ <http://www3.epa.gov/ttn/chief/net/2011inventory.html>

⁴ <http://www.epa.gov/airtrends/values.html>

With respect to potential new sources of Pb, we reviewed provisions in the Federally-approved Oregon SIP designed to control emissions of Pb. Oregon generally regulates new sources of Pb through its pre-construction and operating permit regulations for stationary sources. Oregon's pre-construction permitting rules are found at Oregon Administrative Rules Chapter 340, Division 224 – New Source Review. Oregon's Federally-enforceable state operating permit program is found at Oregon Administrative Rules Chapter 340, Division 216 – Air Contaminant Discharge Permits. These rules are designed to ensure that new or modified stationary sources will not cause or contribute to a violation of the applicable NAAQS.

Based on the Oregon submittal and our review of more recent monitoring data and provisions in the Oregon SIP, we believe it is reasonable to conclude that Oregon emissions will not significantly contribute to nonattainment or interfere with maintenance of the 2008 Pb NAAQS in any other state. We are proposing to approve the Oregon SIP as meeting the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2008 Pb NAAQS.

B. 2010 NO₂ NAAQS

In the submittal, Oregon reviewed monitoring data and trends to evaluate whether emissions in Oregon significantly contribute to nonattainment or interfere with maintenance of the 2010 one hour NO₂ NAAQS in other states. Compliance with the one hour NO₂ NAAQS is determined by comparing the annual 98th percentile of the daily maximum one hour concentration values, averaged over three consecutive years to the level of the NAAQS. This statistic represents the design value at a specific monitor. Oregon found no violations of the one hour NO₂ NAAQS at any established monitoring sites in the United States – for the design value period 2011 through 2013. Oregon also reviewed monitoring data from bordering states. The highest design value was 73 ppb at the San Diego, California, monitor – well below the 100 ppb

level of the standard. Oregon asserted that a review of daily maximum one hour NO₂ concentrations at monitors in Washington, California, Idaho and Nevada also indicate trends well below the standard.

With respect to potential new emissions, Oregon cited provisions in the Oregon SIP that require review of new and modified stationary sources prior to construction. Planned new and modified major sources in attainment and unclassifiable areas must conduct air quality analyses to demonstrate that new emissions, along with emissions from existing sources, will not cause or contribute to a violation of any applicable standard. Based on ambient air monitoring data and provisions in the Oregon SIP that regulate new sources, Oregon determined that it is reasonable to conclude that emissions from sources in Oregon will not significantly contribute to nonattainment or interfere with maintenance of the 2010 one hour NO₂ NAAQS.

We reviewed the Oregon submittal with respect to NO₂ and we agree with the state's conclusion. We also reviewed the most recent data on ambient NO₂ levels in neighboring states – that became available after Oregon conducted its analysis.

For the purpose of evaluating significant contribution to nonattainment, we reviewed design values for the period 2012 through 2014 and found no monitors violating the one hour NO₂ NAAQS in the United States.⁵ We also reviewed data for the previous two design value periods – 2010 through 2012 and 2011 through 2013 – to evaluate interference with maintenance. We found no monitors violating the one hour NO₂ NAAQS in these previous periods, as well. Further, monitored values are well below 100 ppb in states bordering Oregon –

⁵ <http://www.epa.gov/airtrends/values.html>

63 ppb was the highest design value for 2012 through 2014, at the Los Angeles, California, monitor.

We also reviewed provisions in the Federally-approved Oregon SIP designed to control emissions of NO_x – of which NO₂ is a subset. Oregon generally regulates emissions of NO_x through its pre-construction permitting and operating permit regulations. Oregon’s pre-construction permitting rules are found at Oregon Administrative Rules Chapter 340, Division 224 – New Source Review. Oregon’s Federally-enforceable state operating permit program is found at Oregon Administrative Rules Chapter 340, Division 216 – Air Contaminant Discharge Permits. These rules are designed ensure that new or modified stationary sources will not cause or contribute to a violation of the applicable NAAQS.

Based on the Oregon submittal and our review of more recent monitoring data and provisions in the Oregon SIP, we believe it is reasonable to conclude that Oregon emissions will not significantly contribute to nonattainment or interfere with maintenance of the 2010 one hour NO₂ NAAQS in any other state. We are proposing to approve the Oregon SIP as meeting the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2010 one hour NO₂ NAAQS.

IV. Proposed Action

We are proposing to approve the Oregon submittal for the purposes of meeting CAA section 110(a)(2)(D)(i)(I) interstate transport requirements for the 2008 Pb and 2010 one hour NO₂ NAAQS. We intend to address the remainder of the submittal with respect to the 2010 one hour sulfur dioxide and 2012 annual fine particulate matter NAAQS in separate, future actions.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR

52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because it does not involve technical standards; and

- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 2, 2016.

Dennis J. McLerran,
Regional Administrator,
Region 10.

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